TABLE OF CONTENTS

	Page
Preliminary Statement	1
Summary of Argument	2
Argument	3-29
Point One: A proper construction of World War Veterans Act exempts benefits thereof from taxation in hands of beneficiary or his guardian	3-18
Point Two: Property here involved is compensation and insurance received by guardian under Parts II and III of World War Veterans Act and is exempt from State, County and Municipal taxation	18-22
Point Three: The compensation and insurance is still payable to the veteran because entire control and management is in hands of the guardian	22
Point Four: Congress has power under the Constitution to exempt pensions, compensation and insurance from State and Municipal taxation, therefore, Section 22 of World War Veterans Act of 1924 is not unconstitutional	29
Conclusion	29

TABLE OF CASES

Page

Buchanan v. Alexander, 4 Howard 20, 11 L. Ed. 857 4

Choctaw O. & G. R. Co. v. Harrison, 235 U.S. 292, 59 L. Ed. 232, 35 Sup. Ct. Rep. 27 24

City of Atlanta v. Stokes, —Ga.—, 165 S.E. 270 ..... 5, 7, 19, 24

Cranz v. White, 27 Kansas 319, 41 Am. Rep. 408....14, 15

Dwight & Lloyd Co. v. American Ore Co., 263 Fed. 315 5

Funk v. Luithle, 58 N.D. 416, 226 N.W. 595 9

Gillespie v. Oklahoma, 257 U.S. 501, 66 L. Ed. 338, 42 Sup. Ct. Rep. 171 28

In re: Cross Estate, 152 Wash. 459, 278 p. 414..... 10

In re: Estate of Jacob Hallbom, 179 Minn. 402, 229 N.W. 344 ..... 5, 7

In re: Harris Estate, —Minn.—, 229 N.W. 781 16

In re: Wanzell's Estate, 291 Pa. 419, 145 A. 512.... 10

Manning v. Spry, 121 Iowa 191, 96 N.W. 873 27

Martin v. Guilford County, 201 N.C. 63, 158 S.E. 847, 76 A.L.R. 978 ..... 12, 13

McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579 ..... 13, 24

McIntosh v. Aubrey, 185 U.S. 122, 46 L. Ed. 834, 22 S. Ct. 561 ..... 14, 16

Mutual L. Ins. Co. v. Wisconsin, 275 U.S. 136, 72 L. Ed. 202, 48 Sup. Ct. Rep. 55 24

Panhandle Oil Co. v. Mississippi, 277 U.S. 218, 77 L. Ed. 857 ..... 24, 27

Rucker v. Merck, 172 Ga. 793, 159 S.E. 501.... 5, 7, 19, 25

Spicer v. Smith, 288 U.S.—, 77 L.Ed. 599..... 12, 17

State, ex rel Smith v. Board of Commissioners of Shawnee County, 132 Kan. 233, 294 P. 915.. 12, 13

Surace v Danna 248 N.Y. 18, 161 N.E. 315

TABLE OF CASES—Cont.

Page

State v. Wright, —Ala.—, 140 So. 584 12

Succession of Geier, 155 La. 167, 99 So. 26, 32 A.L.R. 353 ..... 10, 11

Tax Commission v. Rife, 119 Ohio State 83, 162 N.E. 390 10

United States v. Hall, 98 U.S. 343, 25 L. Ed. 180.... 21, 28

United States v. Lexington Mill Co. 232 U.S. 399, 58 L. Ed. 658 5

Washington Market Co. v. Hoffman, 101 U.S. 112, 25 L. Ed. 782 5

Watkins v. Hall, 107 W.Va. 202, 147 S.E. 876 10

Wilson v. Sawyer, 177 Ark. 492, 6 S.W. (2d) 825....5,19

Yates County Bank v. Carpenter, 119 N.Y. 550, 23 N.E. 1108, 7 L.R.A. 557 19

STATUTES

Acts of Tennessee Legislature 1907, Chapter 602, Sec. 31 18

Civil War Pension Act of March 3, 1873, c 234, Sec. 33,17 Stat. 576, R.S. Sec. 4747, U.S.C. Title 38, Sec. 54 ..... 14, 15

Constitution of the United States, Article I, Sec. 8 23

World War Veterans Act of 1924, Sec. 22 (43 Stat. at L. 613, c 320, U.S.C. Title 38, Sec. 454) 2, 3, 11, 22

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 79.

J. T. TROTTER, GUARDIAN OF JOSEPH A. LEAKE,
Petitioner,

vs.

STATE OF TENNESSEE, IN ITS OWN BEHALF AND FOR THE USE AND BENEFIT OF BLOUNT COUNTY, TENNESSEE,
Respondent.

SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER.

I.

PRELIMINARY STATEMENT.

The facts upon which this controversy arises are set forth fully in petitioner's original brief, but we desire to discuss a little more thoroughly than we did in the original brief, the reasons relied upon by petitioner in support of his position and to call

the attention of the Court to the authorities which we believe sustain his contention. We also desire to analyze briefly the authorities relied upon by the respondent. Petitioner, therefore, asks leave to file this supplemental brief.

II.

SUMMARY OF ARGUMENT.

Point One. A proper construction of Section 22 of the World War Veterans Act of 1924 (43 Stat. at L. 613, c 320; U.S.C. Title 38, Sec. 454) exempts from taxation the compensation, insurance, and maintenance and support allowance after the same have been received by the beneficiary thereof or his guardian.

Point Two. The property here involved is compensation and insurance which was received by the guardian under Parts II and III of the World War Veteran's Act of 1924 and is therefore exempt from State, County, and Municipal taxation.

Point Three. In the present case the compensation and insurance is still *payable* to the veteran in as much as the entire control and management thereof is in the hands of the guardian and the fund has never reached the veteran.

Point Four. The Congress has the power under the Federal Constitution to exempt from State, County, and Municipal taxation the pensions, compensation, insurance, etc., that it bestows upon its

war veterans and therefore Section 22 of the World War Veterans Act of 1924 (43 Stat. at L. 613, c 320; U.S.C. Title 38, Sec. 454) which exempts such funds from taxation, is not unconstitutional.

III.

ARGUMENT.

(1) Point One.

A proper construction of Section 22 of the World War Veterans Act of 1924 (43 *Stat. at L.* 613, *c* 320; *U.S.C. Title* 38, *Sec.*. 454) *exempts from taxation the compensation, insurance, and maintenance and support allowance after the same have been received by the beneficiary thereof or his guardian.*

This section of the Statute, reads as follows:

> "The compensation, insurance and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable."

We believe that the only fair and reasonable construction which can be made of this language is that the compensation, insurance, and maintenance and

support allowance are exempt from the claims of creditors and from taxation after such funds have reached the beneficiary or his guardian. In our original brief it was stated that this portion of the Statute is practically meaningless unless it is given the construction here insisted upon.

It is conceded by the State of Tennessee that until the funds are paid to the beneficiary or the guardian, they are exempt. But of what value is this language in the Statute if this is as far as the exemption extends? Without this clause in the Statute, these funds could not be reached by the creditors of the veteran nor taxed as his property until they were actually paid over to him or his guardian, because until such time they cannot be considered as a part of his effects.

In *Buchanan vs. Alexander*, 4 *Howard* 20; 11 *L. Ed.* 857, it is said:

> "The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by State process or otherwise, the functions of the government may be suspended. So long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects."

It is a rule of statutory construction that all the

words of a law must have effect, rather than that a part of them should perish and be meaningless.

Dwight & Lloyd Co. vs. American Ore Co., 263 *Fed.* 315.

Washington Market Co. vs. Hoffman, 101 *U. S.* 112, 115; 25 *L. Ed.* 782, 783.

United States vs. Lexington Mill Co., 232 *U. S.* 399, 410, 58 *L. Ed.* 658, 662, —*S. C. Rep.*—.

If this rule of statutory construction is followed we believe it inevitable that this Section of the Act be given the construction insisted upon by petitioner.

While the Supreme Court of Tennessee has held in the instant case that this construction of the Act of Congress is not justified by the language of said Act, the highest courts of a number of other States sustain the position taken by the petitioner.

In Re: Estate of Jacob Hallbom, 179 *Minn.* 402, 229 *N.W.* 344.

Rucker vs. Merck, 162 *Ga.* 793, 159 *S.E.* 501.

City of Atlanta vs. Stokes, —*Ga.*—, 165 *S.E.* 270. (1932).

Wilson vs. Sawyer, 177 *Ark.* 492, 6 *S.W.* (2*d*) 825.

The Arkansas case, cited just above, was one in which the guardian of a disabled soldier had received certain funds from the Government under the World War Veterans Act of 1924 and had turned

these funds over to the Clerk of the Court to be held for the ward. Part of the funds were deposited in a bank and the remainder invested in notes. An attempt was made to garnishee the Clerk of the Court and the bank for a debt owing by the veteran. The trial court held that the funds were not subject to garnishment because they had not been received by the ward and therefore dissolved the attachment. The Supreme Court in passing upon this question said:

> "The Court was correct in the declaration of law made, except the funds were not subject to seizure, even after they had come into the hands of the ward.
>
> * * * * * We think the manifest purpose of the legislation making provision for World War Veterans was to devote the benefactions there provided for the sole use of the beneficiaries, and that *the same should not be subject to the demands of creditors, even after the money had come into their hands, or was held by another for their benefit.*" (Italics ours).

While the Wilson case just quoted from, deals with the provisions of Section 22 of the World War Veterans Act of 1924 which exempts compensation, insurance, etc., from the claims of creditors of the person to whom the award is made, and the case at bar deals with the provision of Section 22 which exempts such funds from taxation, yet the same principle must apply, and if the funds are free from the claims of creditors in the hands of the beneficiary, they must also be exempt from taxation in his hands.

In line with this holding is the case of *In Re*:

Estate of Jacob Hallbom, 179 *Minn.* 402, 229 *N.W.* 344, the precise issue was whether the insurance money of a deceased veteran was subject to the debts of the deceased after such money had been paid to the administrator of his estate. After a somewhat full consideration of the question, the Court held that creditors could not reach this fund.

In the two Georgia cases referred to above, the identical question here involved was before the Supreme Court of that State. There, as here, the money received from compensation and insurance under the World War Veterans Act had been invested in real estate. The case of *Rucker vs. Merck*, 172 *Ga.* 793; 159 *S.E.* 501, which was decided in June 1931, is quoted from quite extensively in our original brief and, therefore, we now quote only from the syllabus thereof in which it is said:

> "Land purchased with funds received from war insurance and allowance for military service, is exempt from taxation under Section 22 of the World War Veterans Act of 1924, 43 Stat. at L. 613; c 320; U.S.C. Title 38, Section 545."

The same question came before the Supreme Court of Georgia again in July, 1932, in the case of *City of Atlanta vs. Stokes, reported in* —*Ga.*—, 165 *S.E.* 270. The Court gave a very elaborate opinion and after analyzing the cases from all the other States, reaffirmed its previous holding. We believe that some of the observations of the Court in thus reaffirming its previous holding, may be appropriately quoted:

"The conclusion of the majority in Rucker v. Merck, supra, was not hastily reached, nor was it expressed without due deliberation. It is true that no extended elaboration or explanation of the federal statute under consideration was entered into, because sometimes the language of the statute is so plain and unambiguous that construction would seem to be unnecessary. In dealing with the case at that time, the majority of the court was of the opinion that the words 'shall be exempt from all taxation' were reasonably plain. It seems now that the word 'payable' is the axis upon which the wheels of construction revolve. The members of the court who differ with me say that it is obvious that this means that the proposed donations are exempt from taxation while they remain in the hands of the government. It is true the courts of a few states have so held. The rulings are cited in the dissenting opinion. We cannot join in this distinction, because we cannot agree that Congress was so ignorant that they were not already acquainted with the fact that funds of the government, its own money, in the hands of its own officers, were altogether exempt from all taxation already, without the necessity of any additional protection. In using the word 'payable,' the ordinary man, without consulting a dictionary, understands that the affix 'able' means that which can or may be, or shall be, or must be in future paid. It therefore denotes that this money, which will be paid to some one and to all of the beneficiaries of the federal legislation, shall be exempt from all taxation after it has been paid and reaches the hands of the beneficiaries. That principle was asserted in Payne v. Jordan, 152 Ga. 367, 110 S.E. 4, in which Mr. Justice Hill, delivering the opinion

> of the court, held that money which had been paid to a beneficiary under this same law, and after having been paid, and the funds being no longer due, but which had been by the beneficitary deposited in a bank, was not subject to garnishment. * * * * * It is therefore unnecessary for us to define the future aspects of the word 'payable' as used in the statute before us. It needs only to be remarked in passing that the use of words denoting future action, in almost all of the penal statutes of this state, does not exempt from the punishment designed by law one who does any of the acts for which penalties are proposed in future."

In the case of *Funk vs. Luithle*, 58 *N.D.* 416, 226 *N.W.* 595, the Supreme Court of North Dakota had under consideration the question of whether the proceeds of a war risk insurance policy, which had been paid to the administrator of the estate of the mother of the deceased veteran, were exempt from the claims of creditors. The Court held that these proceeds were not exempt from such claims against the estate of the deceased mother, but in the course of its opinion remarked that such proceeds could not be reached by the creditors of the deceasd soldier.. The Court used the following language:

> "Appellant says that section 454 of USCA title 38, which provides: 'Compensation, insurance, and maintenance and support allowance * * * * shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under parts II, III, or IV; and shall be exempt from all taxation' is applicable to this case. This is error, how-

> ever. Such section would be applicable to cases where creditors of the deceased soldier were attempting to enforce claims against his estate, and sought to subject this fund as his estate to the payment of their claims."

In *Succession of Geier*, 155 *La.* 167, 99 *So.* 26, 32 *A.L.R.* 355, where the question was one as to exemption from State Inheritance Tax of insurance money received under the War Risk Insurance Act, the Court expressed itself unequivocally to the effect that the benefits conferred by this Act are exempt from all taxation, saying,

> "The terms of the Act are clear and unambiguous. Summarizing its provisions, there is a positive prohibition against all taxation on money paid out by the Federal Government under Section 28, Articles 2, 3 and 4."

We might also call the attention of the Court to a line of cases which hold that the proceeds of war risk insurance paid over by the Government to the administrator of the estate of a deceased soldier, are not subject to a State Inheritance Tax.

Tax Commission vs. Rife, 119 *Ohio State* 83, 162 *N.E.* 390.

In Re: Cross Estate, 152 *Wash.* 459, 278 *P.* 414.

In Re: Wanzell's Estate, 291 *Pa.* 419, 145 *A.* 512.

Watkins vs. Hall, 107 *W. Va.* 202, 147 *S.E.* 876.

To these might be added the case of *Succession of Geier*, 155 *La.* 167, 99 *So.* 26, 32 *A.L.R.* 353, to which we have referred to above.

In these inheritance tax cases the exemption is generally placed on two grounds: First, that the exemption from taxation provided in Section 22 of the World War Veterans Act is applicable; Second, that the persons entitled to the payments do not take as heirs of the deceased soldier, or of the primary beneficiary, but take as beneficiaries under the War Risk Insurance Act and under the contract between the Government and the soldier.

So far as these cases rely upon the first ~~group~~ ground of exemption referred to, they are undoubtedly an authority to sustain the contention of the petitioner in the case at bar. If by virtue of Section 22 of the World War Veterans Act of 1924 (43 Stat. at L. 613, c 320, U.S.C. Title 38, Section 454), the proceeds of a policy of war risk insurance is exempt from State Inheritance Tax after it has been paid by the Government to the administrator of the estate of a deceased soldier, under the same line of reasoning it must be exempt from all other taxation when it is paid over to the veteran himself, or to the guardian of a veteran, or to a dependent of a deceased veteran. In other words, when the Government pays the war risk insurance to the administrator of the estate of the deceased veteran, title to such fund is divested out of the Government and such payment has "operated to discharge the obligation of the United States in this respect" to such

sums, (Spicer vs. Smith, 288 U.S.—, 77 L. Ed. 599) and the fund is, of course, no longer "payable" by the Government. The Government stands in the same plight with reference to the administrator in such a case concerning the funds it has paid unto him as it stands with reference to the guardian in the case at bar concerning the funds that he has received as compensation and war risk insurance. It cannot be said that funds in the hands of an administrator in such a case are exempt from a State Inheritance Tax because they are still "payable" by the Government and, therefore, these inheritance tax cases cannot be reconciled with the line of decisions relied upon by the respondent in the case at bar.

On behalf of the respondent, it is insisted that the meaning of Section 22 of the World War Veterans Act, *supra*, properly construed, means only to exempt the funds mentioned therein so long as they remain in the hands of the Government and are "payable" by it to the party entitled thereto. Reliance is had upon three cases to support this contention, viz: *State vs. Wright*, —*Ala.*—, 140 *So.* 584; *Martin vs. Guilford County*, 201 *N.C.* 63, 158 *S.E.* 847, 76 *A.L.R.* 978, and *State, ex rel Smith vs. Board of Commissioners of Shawnee County*, 132 *Kan.* 233, 294, *P.* 915.

The case of State vs. Wright contents itself with the broad general statement that "it is clear that the exemption applies only to 'compensation, insurance, and maintenance and support allowance,' 'ad-

justment certificates', and 'sums payable' under the Act of Congress and does not extend to privately owned property purchased with money arising from such sources and which was at the time of its purchase within the jurisdiction of the State and subject to its powers of taxation." It cites as authority for this statement *Martin vs. Guilford County, supra, State, ex rel Smith vs. Board of Commissioners of Shawnee County, supra, McCulloch vs. Maryland,* 4 *Wheat,* 316, 4 *L. Ed.* 579, and two Iowa cases.

The case of McCulloch vs. Maryland is admittedly an outstanding case on the question of taxation, but it in no wise construes a statute similar to the one here in qusetion. The two Iowa cases cited are also without application and are not based upon construction of any such statutes. The North Carolina and Kansas cases referred to as authority by the Alabama Court are hereinafter discussed.

The case of *Martin vs. Guilford County,* 201 *N.C.* 63, 158 *S.E.* 847, is based entirely upon the Kansas case of State, ex rel Smith vs. Board of Commissioners of Shawnee County, which is hereinafter referred to. No independent line of reasoning is set out in the opinion, which consists largely of a recitation of the facts involved in the Kansas case and a quotation from the Supreme Court in that case.

We, therefore, pass to the case of *State, ex rel Smith vs. Board of Commissioners of Shawnee County,* 132 *Kansas* 233, 294 *P.* 915, and which was decided on January 10, 1931. In this case the agreed

statement of facts showed that the guardian had collected $1271.00 in compensation under the World War Veterans Act from the United States Government and this had been invested by him in certain stock of the Chile Copper Company, a private corporation; that he later sold this stock at a price sufficient to enable him to buy $5,000.00 of bonds issued by the same Company. These bonds were assessed for taxation. Whether these bonds were exempt from taxation was the question before the Court, it being insisted by the guardian that the bonds were the proceeds of compensation received by him and exempt under Section 22 of the World War Veterans Act of 1924, *supra*. The Court held that such property was not exempt from taxation on the theory that the exemption provided for by Section 454 of U.S.C. continued only so long as the funds referred to remained "payable" by the Government and that after such funds had been paid to the beneficiary or guardian, this section had no application. This decision is based largely upon the earlier Kansas case of *Cranz vs. White*, 27 *Kansas* 319, 321, 41 *Am. Rep.* 408, and upon the case of *McIntosh vs. Aubrey*, 185 *U.S.* 122, 46 *L. Ed.* 834, 22 *S. Ct.* 561. Both of these cases construed the Civil War Pension Act, being Act of March 3, 1873, c 234, Sec. 33, 17 Stat. 576, R.S. Sec. 4747; U.S.C. Title 38, Sec. 54. The section of the previous Pension Act there construed, reads as follows:

> "No sum of money due, or to become due, to any pensioner shall be liable to attachment,

> levy, or seizure by or under any legal or equitable process whatever, whether the same remain with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such petitioner."

In the two cases just referred to this Court and the Supreme Court of Kansas construed this language to mean that pension money was not exempt in all its situations, but only under one condition, to-wit: when "due or to become due." This construction of U.S.C. Title 38, Sec. 54 was undoubtedly correct. As was said in *Cranz vs. White, supra,*

> "The protection is to an undelivered sum of money. This, which is implied in the first words of the section, is made more clear by its after language, for it prohibits seizure whether this sum of money due or to become due remains with the pension office or an officer or agent thereof, or in course of transmission to the pensioner entitled thereto. To guard against any abuse or destruction, it thus specifies the various positions which money due or to become due can occupy, and in effect declares that pension money shall not be interrupted on its way to the pensioner. The last clause of the section, which reads, 'but shall inure wholly to the benefit of such pensioner,' is qualified by and must be read in the light of the preceding words of the section. It is comprehensive language, but it is only language strengthening and marking more plain the intention of the preceding words. It applies to money due or to become due, and not to money paid and in possession."

While the Supreme Court of Kansas in State, ex rel vs. Board of Commissioners of Shawnee County, attempts to give unto Section 22 of the World War Veterans Act of 1924 a similar construction, we believe such position is untenable. In the Act now under consideration, there are no words of similiar import to the words "whether the same remains with the pension office or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto," which are found in the previous Statute. It seems to us that to give the word "payable" as used in the World War Veterans Act of 1924 the same construction as was given to the words "due or to become due" as used in the Act of 1873, is placing upon this word "payable" a badly strained construction and one not at all justified by the context of the Section.

The Supreme Court of Minnesota in *In Re: Harris Estate*, —*Minn.*—, 229 *N.W.* 781, *page* 782-783, expressly holds that the case of McIntosh vs. Aubrey, *supra*, cannot be applied to the construction of the present Statute. The following language, which it uses, has equal application to the Kansas case of Cranz vs. White, *supra*:

> "The case of McIntosh v. Aubrey, 185 U.S. 122, 22 S. Ct. 561, 46 L. Ed. 834, cited in the Schaffer Case, supra, does not here apply. There, real property was claimed to be exempt from debts of the owner because she had purchased same with money received by her as a pension as the widow of a deceased soldier. The exemption there considered was exemption

> from seizure or sale of money due or to become due as a pension while the same remained in the pension office or in the hands of any officer or agent of the pension office. The court held that the exemption applied only while the fund was in the course of transmission to the pensioner, and did not apply to property some time thereafter purchased by the pensioner with the pension money."

The case of *Surace* v. *Donna,* 248 N. Y. 18, 161 N. E. 315, is, we believe, very much in point. In that case the court had under consideration the exemption provision of the New York Workmen's Compensation Statute. The exemption provision of that statute reads as follows:

> "Compensation or benefits due under this chapter shall not be assigned, released, or commuted except as provided by this chapter, and shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived."

The injured employee had received certain compensation from his employer which had been deposited in a bank and his creditor sought to reach the same. The employee claimed exemption of the fund under the statute quoted. In passing upon the question the court said:

> "By concession the moneys due under the award would have been exempt from the pursuit of creditors before they reached the judgment

debtor. The argument is, however, that they became subject to seizure the instant they were paid. If this is so, the exemption is next to futile. All that a creditor has to do is to obtain an order in supplementary proceedings, containing, like the order in this proceeding, the usual provision restraining the judgment debtor from making any transfer or disposition of his property until further directions in the premises. Then, as the installments of an award are paid, the injunction will tie them up. They may be appropriated to the last dollar in satisfaction of an ancient debt. They will no longer be a fund for the support of the indigent and helpless.

"So narrow a construction thwarts the purpose of the statute. The Workmen's Compensation Law was framed to supply an injured workman with a substitute for wages during the whole or at least a part of the term of disability. He was to be saved from becoming one of the derelicts of society, a fragment of human wreckage (*Matter of Post* v. *Burger & Gohlke*, 215 N. Y. 544; *N. Y. C. R. R. Co.* v. *White*, 243 U. S. 188, 197). He was to have enough to sustain him in a fashion measurably consistent with his former habits of life during the trying days of readjustment. The cost of such support becomes a charge upon the industry without regard to fault. Rehabilitation of the man, not payment of his ancient debts, is the theme of the statute, and its animating motive.

"The exemption must have a meaning consistent with the policy behind it. Few words are so plain that the context or the occasion is without capacity to enlarge or narrow their exten-

sion. The thought behind the phrase proclaims itself misread when the outcome of the reading is injustice or absurdity (*Smith* v. *People*, 47 N. Y. 330, 341, 342; *Matter of Meyer*, 209 N. Y. 386, 389). Adherence to the letter will not be suffered to 'defeat the general purpose and manifest policy intended to be promoted' (*Spencer* v. *Myers*, 150 N. Y. 269, 275; *People ex rel. Wood* v. *Lacombe*, 99 N. Y. 43; *Matter of Folsom*, 56 N. Y. 60, 66; *Kent's Comm.* 462). We are told that the word 'due' must be held to limit the exemption to compensation owing and unpaid. But 'due,' like words generally (*Towne* v. *Eisner*, 245 U. S. 418, 425; *Int. Stevedoring Co.* v. *Haverty*, 272 U. S. 50), has a color and a content that can vary with the setting. Compensation due under an act may be a payment presently owing, or one to become due in the future, or one already made, but made because due, *i. e.*, required or commanded (*cf. Allen* v. *Patterson*, 7 N. Y. 476; *U. S.* v. *State Bank of North Carolina*, 6 Pet. (U. S.) 29, 36). If the narrower meaning is the commoner, the broader does not strain the word beyond the limits of construction. A workman holding in his hands a payment made by his employer or an insurance carrier in satisfaction of an award might say not inappropriately that the money so received was due under the statute. The argument is not compelling that some of the prohibited acts—assignment, release, commutation—apply to compensation before the stage of payment, because impossible thereafter. This does not mean that other acts—execution, attachment, supplementary proceedings—appropriate or possible in later stages must be fitted to the same mould. The maxim

'*reddendo singula singulis*' supplies the applicable rule.

* * * * * * * *

"In these circumstances, our decision in *Yates County National Bank* v. *Carpenter* (119 N. Y. 550) supplies the applicable rule. *Code of Civil Procedure*, Section 1393 (now Civ. Prac. Act, Sec. 667), exempts from execution a 'pension * * * heretofore or hereafter granted by the United States * * * for military * * * services.' We were asked to limit this exemption to the pension or the pension moneys before payment by the government. We held that it protected moneys collected by the pensioner. We even extended the immunity to a dwelling house and lot in which the moneys were invested. * * *"

Mr. Justice Cardozo in the same opinion made the following reference to the opinion in *McIntosh* v. *Aubrey, supra:*

"* * * Thus *McIntosh* v. *Aubrey* (185 U. S. 122) and *Kellogg* v. *Waite* (12 Allen, 529) construe a Federal statute which exempts a 'sum of money due, or to become due, to any pensioner.' The statute itself supplies a gloss upon the meaning. The money is to be exempt 'whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto.' (R. S., Sec. 4747.) The implication is not difficult that the exemption is to cease when the transit has been ended. * * *"

Conceding unto the Supreme Court of Kansas that high regard to which its decisions are entitled, we respectfully insist that its conclusion reached in State ex rel. *v.* Board of Commissioners of Shawnee County is not sound; that the word "payable" as contained in Section 22 of the World War Veterans' Act of 1924 is used to designate the source from which are derived the funds specified as exempt from taxation and the claims of creditors, and that that word as there used is not a limitation upon the time at which, or the circumstances under which, such funds are exempt.

To put it in other language, the words of exemption as used in this statute are generically descriptive of funds which have their origin in the provisions of parts 2, 3, and 4 of the Act and these words are used to differentiate funds which a veteran shall become entitled to receive, or shall receive, or has received, under this Act from other funds of his, derived or which may be derived from some other source.

It is generally conceded that statutes relating to pensions should be liberally construed with a view of promoting their purposes and it cannot be denied that one of the purposes of the provisions of the World War Veterans Act now under consideration was to safeguard the beneficiaries in the receipt and use of the payments made to them thereunder. In fact this Court has so held in *Spicer vs. Smith*, 288 *U. S.* —, 77 *L. Ed.* 599, where it is said:

> "The provisions for exemption, nonassignability and suspension of payments plainly im-

> ply the passage of title from the United States to the veteran. The denunciation of embezzlement by guardians is not inconsistent with that intention. These regulations, like many to be found in pension laws, disclose a purpose to safeguard to beneficiaries the appropriations and payments made for their benefit."

When these principles are taken into consideration, the conclusion seems inescapable that under a proper construction of Section 22 of the World War Veterans Act of 1924 compensation, insurance, and maintenance and support allowances are exempt from taxation after the same have been received by the beneficiary or his guardian.

(2) Point Two.

The property here involved is compensation and insurance which was received by the guardian under Parts II and III of the World War Veterans Act of 1924 *and is therefore exempt from State, County, and Municipal taxation.*

As pointed out in our original brief, (page 10) the right and power to tax the property here involved must be determined according to the status of that property on January 10, 1929 (Acts of Tennessee Legislature 1907, Chapter 602, Section 31). Every dollar that had then been invested in this property by the guardian was derived from the money received by him for his ward from the United

States Government either as compensation or as war risk insurance. (Record page 8).

Under these circumstances we do not believe it will be seriously contended that this property is taxable if the compensation and insurance are exempt from taxation after they have been received by the veteran or his guardian.

In the case of *Wilson vs. Sawyer*, 177 *Ark.* 492, 6 *S.W.* (2*d*) 825, part of the property held exempt from garnishment and attachment by virtue of provisions of the Act we are now discussing had been invested in notes.

In the cases of *Rucker vs. Merck*, 172 *Ga.* 793, 159 *S.E.* 501 *and City of Atlanta vs. Stokes*, —*Ga.* —, 165 *S.E.* 270, the property held exempt from taxation under this Statute was in like condition as the property in the case at bar—that is, it consisted of real estate purchased with compensation and war risk insurance which had been received from the United States Government.

In *Yates County Bank vs. Carpenter*, 119 *N.Y.* 550, 23 *N.E.* 1108, 7 *L.R.A.* 557, the New York Court of Appeals had under consideration a State Statute containing provisions similar to those in the World War Veterans Act. In discussing that statute on this particular question the Court said:

> "If the soldier is not protected in the act of exchanging his pension for the necessities of life, its only effect would be to enable his creditors to take it in satisfaction of their claims.

No benefit is conferred if the protection is not extended beyond the possession of the money itself, for its only value consists in its purchasing power, and if the soldier is deprived of that, the pension might as well, so far as he is concerned, have remained ungranted. The plain purpose of the Act was to promote the comfort of the soldier; to secure to him the bounty of the government free from the claims of creditors, and to insure him and his family a safe, although modest, maintenance so long as their needs required it. * * * * * * * .

* * * * * "We entertain no doubt that where the receipts from a pension can be directly traced to the purchase of property, necessary or convenient for the support and maintenance of the pensioner and his family, such property is exempt under the provisions of this Statute."

"Where such moneys can be clearly identified and are used in the purchase of necessary articles, or are loaned or invested for purposes of increase or safety, in such form as to secure their available use for the benefit of the pensioner in time of need, we do not doubt but that they come within the meaning of the Statute; but where they have been embarked in trade, commerce or speculation, and become mingled with other funds so as to be incapable of identification or separation, we do not doubt but that the pensioner loses the benefit of the statutory exemption. These propositions, we think, are fully supported by the cases in this and other States."

We believe that such an interpretation is the only fair and reasonable construction that can be made

of such legislative provisions as are found in Section 22 of this Act. The only way to protect the interest of the veterans and their dependents is to secure to them the use of the gratuity or bonus granted them. That it has been the purpose of this government from its earliest times down to the present to secure to the beneficiaries of a pension such exclusive use and benefit thereof can not be doubted. In referring to this question this Court in *United States vs. Hall*, 98 *U.S.* 343, 346, 25 *L. Ed.* 180, 183, used the following language:

> "Without more, these selections from the almost innumerable list of Acts passed granting pensions are sufficient to prove that throughout the whole period since the Constitution was adopted it has been the policy of Congress to enact such regulations as will secure the beneficiaries of the pension granted the exclusive use and benefit of the money appropriated and paid for that purpose. Other legislation of Congress may also be referred to, confirming that proposition.
>
> "Pensioners of the kind are, in certain aspects, wards of the United States, and the legislation of Congress already reviewed shows that the National Legislature has been constant and vigilant in endeavors to protect their interest and secure to them the use of the annuities and pensions granted in their behalf."

The fact that the proceeds of a certain fire insurance policy were paid on this property in March, 1929, can not affect the question now under discus-

sion, as was pointed out in pages 19 and 20 of our original brief.

(3) Point Three.

In the present case the compensation and insurance is still payable to the veteran in as much as the entire control and management thereof is in the hands of the guardian and the fund itself has never reached the veteran.

We believe that this point was fully covered in our original brief (Pages 17-19). We shall not lengthen this brief by repeating what was said therein but we kindly ask the Court to refer thereto.

(4) Point Four.

The Congress has the power under the Federal Constitution to exempt from State and Municipal taxation the pensions, compensation, insurance, etc., that it bestows upon its war veterans and therefore Section 22 of the World War Veterans Act of 1924 (43 Stat. at L. 613, c 320; U.S.C. Title 38, Sec. 445) which exempts such funds from taxation, is not unconstitutional.

It is intimated, though not argued extensively, in the brief filed by the respondent that Congress does not have the power to exempt from State and

Municipal taxation such funds as those now under discussion. We did not mention this question in our original brief and hence it is proper that we should call the attention of the Court to a few of the authorities which we believe clearly show that the Congress has such power.

It is not necessary to cite authorities to sustain the power of the Federal Government to grant pensions and gratuities to its ex-service men. The only question involved here is whether Congress by exempting from all taxation the gratuities it grants to its ex-service men and their dependents, has exceeded the express or implied powers granted unto it under the Constitution.

It is the position of the petitioner that the Federal Government has such authority under the war powers granted unto Congress in Article I, Section 8 of the Constitution; that by virtue of the authorization therein contained this exempion from taxation is legal; and that by virtue of Article VI of the Constitution, the Statue by which it was enacted —that is, Section22 of the World War Veterans Act of 1924, is supreme and must control over any state tax law.

It has been repeatedly held by this Court that:

> "The states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government."

McCulloch vs. Maryland, 4 *Wheat* 316, *p.* 436, 4 *L. Ed.* 579, 606.

Choctaw O. & G. R. Co. vs. Harrison, 235 *U.S.* 292, 59 *L. Ed.* 232, 35 *Sup. Ct. Rep.* 27.

Mut. L. Ins. Co. vs. Wisconsin, 275 *U.S.* 136, 72 *L. Ed.* 202, 48 *Sup. Ct. Rep.* 55.

Panhandle Oil Co. vs. Mississippi, 277 *U.S.* 218, 72 *L. Ed.* 857, 48 *Sup. Ct. Rep.* 451.

No power granted unto the Federal Government is more important and more necessary to its existence than its power to declare war, to raise and support armies and to provide and maintain a navy. Without these powers, of course, no government could exist and it is vitally important that the Federal Government shall have the right and power to determine, even to the minutest detail, by what measures and in what manner a war shall be begun, carried on, and concluded.

In *City of Atlanta vs. Stokes*, —*Ga.*—, 165 *S.E.* 270, in which was questioned the power of the Federal Government to exempt these gratuities from State taxation, the Supreme Court of Georgia, speaking through Chief Justice Russell, said:

> "To maintain the power to wage war, it is as much essential to the morale of the troops of a government that those who face death upon the field of Mars should have the right to anticipate rewards in the future, especially if they have been victorious, as to expect that they

will receive the monthly compensation for service, which must be meager indeed in instances when their lives are actually exposed to danger. It seems strange, in view of the long line of decisions on this subject, that any one can suppose, even though the power of a state to tax generally is supreme, that that power may be used to hamper, hinder, annoy, harass, and impede the federal government in the exercise of its unlimited power to carry on war. Certainly no state should complain of the terms upon which the federal government rewards its soldiers, when the compensation, insurance, and maintenance and support allowance given them under the federal statute with which we are now dealing is an acquisition and addition to the property of the state, which would never have existed but for the liberality of the federal government in grateful recognition of the services of citizens of each and all the states. The exercise of this war power does not relieve from taxation anything except the compensation which is sent into the state as a reward to soldiers for their services. If it were an attempt of the federal government to relieve from taxation (as seems to be argued in the dissenting opinion) a portion of the property in the state previously subject to taxation, the case would be altogether different."

The Supreme Court of Georgia was discussing this same question in an earlier case, *Rucker vs. Merck*, 172 *Ga.* 793, 159 *S.E.* 501, when it said:

"It is suggested, however, that it is not within the power of the federal government to exempt any property within the limits of the

state from state taxation or from taxes imposed by counties as subordinate governmental divisions of the state. While standing for a strict construction of the constitution and a strict observance of all the rights of the sovereign states, we cannot concur in this contention. The exclusive power to declare war was confided to Congress in the Constitution of 1787 (Const. U.S. Art. 1, Sec. 8, Cl. 11). The power of the federal government in the exercise of its power to make war is unlimited, absolute, and exclusive. And as a part of the war-making power it is the right of Congress to hold forth and to confer pensions and privileges at the conclusion of a war, as a reward to those who are injured or died in defense of the flag. The fact that the United States government has held forth its willingness to pension and provide for those soldiers and their dependents who have died or been disabled in service contributes no little to that willingness on the part of our people to give vital force to the federal government to carry out the power intrusted to it by the federal constitution. As a general rule, of course the federal government has no power to interfere with the processes of the state in the enforcement of local laws in regard to taxation in any commonwealth in the union. But we deem this principle not incompatible with the right of Congress, in the exercise of its exclusive power in the selection of successful means of making war (if it deems it necessary to go to war), to impose conditions upon the gifts or compensation the federal government makes from its own funds. And these must necessarily be paramount, or provide exceptions to the ordinary operation of the state tax laws.

> If there be any truth in the old adage that the right to tax is the right to destroy, then the provision of the federal statute, as applicable in this case, is merely a statement by the general government that its gifts to the soldier shall not be destroyed by any process, not even by the slow and grinding process of taxation."

In *Manning vs. Spry*, 121 *Iowa* 191, 96 *N.W.* 873, the Court said:

> "If the state were permitted to tax pension money, it could virtually destroy any bounty the government might see fit to bestow on its soldiers and sailors, and the guarantee that it should inure wholly to the benefit of the pensioner would be entirely destroyed."

It seems clear to us that by taxing the benefits conferred by the various forms of pension legislation the states are burdening the exertion of a national power. In other words the state is making a source of revenue out of the benefits conferred by the government on its former soldiers. Undoubtedly the state does not have the power to do this. It was said by this Court in *Panhandle Oil Company vs. Mississippi*, 277 *U.S.* 218, 77 *L. Ed.* 857, 48 *S.C. Rep.* 451:

> "These states may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of Federal functions."

As pointed out by Mr. Justice Butler in the Panhandle Oil Company case the strictness of this rule was emphasized in *Gillespie vs. Oklahoma*, 257 *U.S.* 501, 505; 66 *L. Ed.* 338, 340; 42 *Sup. Ct. Rep.* 171.

In *United States vs. Hall*, 98 *U.S.* 343; 25 *L. Ed.* 180, this Court said that pensioners are "in certain aspects wards of the United States." If they be wards of the government, the decisions of this Court in the various cases which discuss the right to tax Indian property are especially applicable. In such cases it has been held that any state tax which hamper the efforts of the United States to make the best terms possible for its Indian wards is in violation of the Federal Constitution in that it is a burden upon or interference with the exertion of those powers granted unto the Federal Government.

See *Gillespie vs. Oklahoma*, 257 *U.S.* 500, 506; 66 *L. Ed.* 338, 341.

Under the same line of reasoning a state tax which would interfere with the soldier wards of the government securing the most from their compensation, pension and insurance awards would be unconstitutional.

It necessarily follows that if State Statutes taxing these gratuities granted by the federal government are unconstitutional the exemption provided

for in the Federal Statute must be a valid exercise of the power vested in the Federal Government under the constitution.

It may be that under the line of cases just cited, it was not necessary for Congress to exempt these gratuities from taxation by statute, but that is a question not necessary to discuss at this time.

IV.

CONCLUSION

Under the authorities herein cited, we earnestly insist that the property of Joseph A. Leake is not subject to taxation by either the State of Tennessee or Blount County and that the Supreme Court of Tennessee was in error in holding that this property is subject to taxation and that the case should be reversed by this Honorable Court.

Respectfully submitted,

RUSSELL R. KRAMER
Solicitor for Petitioner.

D. SYLVAN KRAMER
JOHN W. MORTON,
Of Counsel.